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PSI Corporation

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

PSI CORPORATION (f/k/a/ FRIENDLYWAY
CORPORATION, f/k/a BIOFARM, INC.),

Plaintiff,

vs.

ALEXANDER VON WELCZECK, HENRY LO,
MICHAEL DRAPER, and FRIENDLYWAY
AG,

Defendants.

FRIENDLYWAY, INC., KARL
JOHANNSMIEIER, PACIFIC CAPSOURCE,
INC., and DERMA PLUS, INC.,

Nominal Defendants.

Case No. C 07-02869 SBA

**PSI CORPORATION'S REQUEST FOR
JUDICIAL NOTICE FOR ITS MOTION
TO DISMISS DEFENDANTS VON
WELCZECK'S AND LO'S CROSS-
COMPLAINT**

JURY TRIAL DEMANDED

Date: September 11, 2007

Time: 1:00 pm

Dept.: United States District Court, Oakland
Division, Courtroom 3

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Pursuant to Federal Rule of Civil Procedure 201, Plaintiff PSI Corporation (“PSI”) requests that the Court take judicial notice of four (4) documents as part of its Motion to Dismiss Defendants Alexander von Welczeck’s and Henry Lo’s Cross-Complaint. The documents include:

- (1) August 13, 2004 Share Exchange Agreement (the “SEA”) by and between Biofarm, Inc., Alexander von Welczeck and friendlyway AG (Exhibit 1 to Memorandum of Points and Authorities);
- (2) December 10, 2004 Closing Agreement for the SEA (Exhibit 2 to Memorandum of Points and Authorities);
- (3) Friendlyway Corporation’s March 9, 2006 Securities and Exchange Commission Form 10-KSB (Exhibit 3 to Memorandum of Points and Authorities); and
- (4) April 27, 2006 Share Exchange Agreement by and between Friendlyway Corporation, Kenneth J. Upcraft and Pantel Systems, Inc. (the “Pantel Agreement”) (Exhibit 4 to Memorandum of Points and Authorities).

When assessing a motion to dismiss, the Court may consider documents attached to the operative pleadings or documents incorporated by reference in the pleadings. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (citing *Van Buskirk v. CNN*, 284 F.3d 977, 980 (9th Cir. 2002)). Moreover, the Court also can consider a number of matters of which it may properly take judicial notice without converting the motion to dismiss to one for summary judgment. *In re Calpine Corp. Sec. Litig.*, 288 F. Supp. 2d 1054, 1074 (N.D. Cal. 2003); *see also Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (records and reports of administrative bodies); *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1198 (9th Cir. 1988) (court records); *In re Copper Mountain Sec. Litig.*, 311 F. Supp. 2d 857, 863 (N.D. Cal. 2004) (SEC filings).

The Court may consider exhibits 1 through 4 of PSI’s Memorandum of Point and Authorities without converting the present motion to one for summary judgment as the exhibits were either attached to or referenced in the underlying pleadings or are subject to judicial notice. The SEA, Officers’ Certificates and Pantel Agreement are referenced in and incorporated into Defendants

1 Welczeck's and Lo's Cross-Complaint. [Docket No. 28 at ¶¶ 6, 8, 9, 10, 18, and 24] The September
2 20, 2005 Form 8-K is a SEC filing (submitted while Defendants controlled the company) that
3 publicly disclose facts that allegedly support Count One of Defendants' Cross-Complaint. [Docket
4 No. 28 at ¶¶ 12-16] As Defendants either referenced and incorporated the documents at issue into
5 their Cross-Complaint or submitted the documents to the SEC for public dissemination, the Court
6 may consider the documents when assessing the merits of Defendants' Cross-Complaint as tested by
7 PSI's motion to dismiss.
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9 WHEREFORE, Plaintiff PSI Corporation respectfully requests that the Court take judicial
10 notice of Exhibits 1 through 4 of its Memorandum of Points and Authorities in Support of its Motion
11 to Dismiss Defendants Alexander von Welczeck's and Henry Lo's Cross-Complaint.
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14 COZEN O'CONNOR
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16 Dated: July 16, 2007

By: s/Daniel D. Harshman
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PSI Corporation
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